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OFFICE OF PETITIONS

In re Application of :
Li et al. : DECISION GRANTING
Application No. 10/735,579 : PETITION
Filed: 12 December, 2003 :
Attorney Docket H0003137 DIV-4780 :
:

This is a decision on the petition under 37 CFR 1.53(e) on 23 August, 2004, which is treated as a petition requesting that the Notice of Incomplete Nonprovisional Application mailed on 2 July, 2004, be withdrawn.

The application was filed on 12 December, 2003, without drawings.¹ Accordingly, on 2 July, 2004, Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application" stating that no filing date had been assigned because the application was deposited without drawings, and requiring drawings be filed if necessary. An oath or declaration was also required.

In response, on 23 August, 2004, the present petition was filed, along with a declaration. Petitioners assert that the drawings are not necessary for an understanding of the subject matter sought to be patented. Petitioners request that the application, without drawings, be accorded a filing date of 12 December, 2003.

It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention

¹35 U.S.C. § 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented."

under 35 U.S.C. 113 (first sentence).² A review of the record reveals that Claims 1-22 are composition claims and 32-54 are method claims. Additionally, Claims 55-81 in the preliminary amendment filed with the application papers are composition claims. Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention. Accordingly, the application, as filed, is entitled to a filing date.

The petition is granted. The petition fee of \$130.00 will be credited to counsel's deposit account, No. 50-2518.

The "Notice of Incomplete Nonprovisional Application" mailed on 2 July, 2004, is vacated to the extent that it stated that the application had not been accorded a filing date.

As Office records indicate the application has already been accorded a filing date of 12 December, 2003, the application is being forwarded to Technology Center 1700 for examination in due course.

Telephone inquiries specific to this matter should be directed to the undersigned at 703.308.6918.


Douglas I. Wood
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Office of Petitions

²MPEP 601.01(f).